

ORTIZ & ORTIZ, L.L.P.  
127 Livingston Street, 2<sup>nd</sup> Floor  
Brooklyn, New York 11201  
Norma E. Ortiz  
Tel. (718) 522-1117

Hearing Date: Feb. 14, 2012  
Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Case No. 11-46479

MANUEL ZABALA,

Chapter 13

Debtor.

-----X

**AMENDED NOTICE OF HEARING ON DEBTOR'S OBJECTION TO CLAIM  
NUMBER 6 OF ONE WEST BANK, FSB**

**PLEASE TAKE NOTICE**, that upon the annexed objection dated January 6, 2012 (the "Objection"), of Manuel Zabala (the "Debtor"), the undersigned will move before the Honorable Elizabeth S. Stong, United States Bankruptcy Judge, in the United States Bankruptcy Court of the Eastern District of New York, 271 Cadman Plaza, Brooklyn, New York 11201, on the 14<sup>th</sup> day of February, 2012 (the "Hearing Date"), at 10:00 a.m., or as soon thereafter as counsel may be heard, for the entry of an order pursuant to Section 502 of Title 11, United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), disallowing or expunging Claim 6 filed by One West Bank, FSB as duplicative.

**PLEASE TAKE FURTHER NOTICE**, that you need not appear at the aforesaid hearing if you do not object to the relief requested in the Objection.

**PLEASE TAKE FURTHER NOTICE**, that any response to the Objection must (a) be in writing and (b) must be filed with the Clerk of the Bankruptcy Court electronically at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov). If you do not have the ability to file an objection electronically, the

objection may be filed with the Clerk of the Court by presenting the Clerk with a copy of the objection saved on a diskette or compact disk in .pdf format by the date stated above. A copy of the objection must be provided to (a) the Chambers of the Hon. Elizabeth Stong, 271 Cadman Plaza, Brooklyn, New York 11201 so as to be received no later than seven (7) days before the hearing. The objection must comply with the Bankruptcy Rules and the Local Bankruptcy Rules of the court and must state with particularity the legal and factual bases for such objection.

Dated: Jan. 10, 2012  
Brooklyn, New York

S/Norma E. Ortiz  
Norma E. Ortiz  
ORTIZ & ORTIZ, L.L.P.  
127 Livingston Street  
Brooklyn, New York 11201  
Tel. (718) 522-1117  
Debtor's Counsel

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127 Livingston Street, 2<sup>nd</sup> Floor  
Brooklyn, New York 11201  
Norma E. Ortiz  
Tel. (718) 522-1117

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Case No.: 11-46479

MANUEL ZABALA,

Chapter 13

Debtor.

-----X

**DEBTOR'S OBJECTION TO CLAIM  
NUMBER 6 ONE WEST BANK, FSB**

TO THE HONORABLE ELIZABETH STONG,  
UNITED STATES BANKRUPTCY COURT:

Manuel Zabala (the "Debtor"), by his attorneys Ortiz & Ortiz, L.L.P., hereby objects to the Proof of Claim Numbered Six (6) filed by One West Bank, FSB. (the "Bank"). In support thereof, the Debtor states as follows:

**Background**

1. The Debtor filed a voluntary Chapter 13 petition on July 27, 2011.

2. The Debtor owns a parcel of real property located at 232 Sonja Circle, Davenport, Florida (the "Property"). He purchased the Property for investment purposes.

3. The Bank filed proof of claim Number 4 for \$240,784.64 on August 18, 2011.

Copies of the first two pages of the claim are annexed as Exhibit A.

4. The Bank filed a second proof of claim Number 6 for \$240,784.64 on September 19, 2011. Copies of the first two pages of the claim are annexed as Exhibit B.

**Relief Requested**

5. It appears Claim 6 duplicates Claim 4. The Debtor requests that Claim Six (6) be disallowed and/or expunged as it is duplicative.

**Notice**

6. The Debtor served this objection on above-stated Creditor(s), the Chapter 13 Trustee, and the U.S. Trustee. It is respectfully submitted that such notice is adequate.

**Reservation of Rights**

7. The Debtor reserves the right, if necessary, to amend, modify, or supplement the objections raised herein, or raise additional objections, based upon information discovered during the claims resolution process.

WHEREFORE, the Debtor respectfully requests entry of an order disallowing and/or expunging the claim, as requested above, and granting any further relief deemed just.

Dated: Brooklyn, New York  
6 January 2012

S/Norma E. Ortiz  
Norma E. Ortiz, Esq. (NO 4748)  
ORTIZ & ORTIZ, L.L.P.  
127 Livingston Street  
Brooklyn, New York 11220  
Tel. (718) 522-1117  
Debtor's Counsel

**EXHIBIT A**

<b>UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF NEW YORK BROOKLYN DIVISION</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: Manuel Zabala		<b>Case Number:</b> 111-46479-ESS
NOTE: <i>This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): OneWest Bank, FSB		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____ <i>(If known)</i>  Filed on: _____
Name and address where notices should be sent: OneWest Bank, FSB P. O. Box 829009 Dallas, Texas 75382-9009		
Name and address where payment should be sent (if different from above): OneWest Bank, FSB Bankruptcy Department 6900 Beatrice Drive Kalamazoo, Michigan 49009  Telephone Number: (800) 669-2300		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
<b>1. Amount of Claim as of Date Case Filed:</b> \$240,784.64 If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.</b>  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____).  <b>Amount entitled to priority:</b>  *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
<b>2. Basis for Claim: Money Loaned</b> (See instruction #2 on reverse side.)		
<b>3. Last four digits of any number by which creditor identifies debtor: xxxxxx0908</b>  <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.)		
<b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  <b>Nature of property or right of setoff:</b> <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other: _____ <b>Describe:</b> 232 Sonja Circle, Davenport, Florida 33897  <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate:</b> _____  <b>Amount of arrearage and other charges as of time case filed included in secured claim,</b> <b>if any: \$47,267.07      Basis for perfection: Recordation of Lien</b>  <b>Amount of Secured Claim:</b> \$240,784.64 <b>Amount Unsecured:</b> \$0.00		
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. <i>(See instruction 7 and definition of "redacted" on reverse side.)</i>  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: _____		
Date: August 18, 2011	<b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  /s/ <b>Chad Meintel as Creditor's Authorized Agent</b> 972.643.6600	
		<b>FOR COURT USE ONLY</b>

*Penalty for presenting fraudulent claim:* Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

# NOTE

August 10, 2005  
[Date]

Jacksonville Beach  
[City]

Florida  
[State]

232 Sonja Circle, Davenport, FL 33897  
[Property Address]

## 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 196,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Indymac Bank, F.S.B., a federally chartered savings bank. I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

## 2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.625 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

## 3. PAYMENTS

### (A) Time and Place of Payments

I will pay Principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on October, 2005.

I will make these payments every month until I have paid all of the Principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on September 1, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at Indymac Bank, F.S.B., P.O. Box 78826, Phoenix, AZ 85062-8826

or at a different place if required by the Note Holder.

### (B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,255.01

## 4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

Loan No.

Florida Fixed

—THE COMP

Mac/Freddie Mac UNIFORM INSTRUMENT

Page 1 of 3

MIN: 100055401217-24474

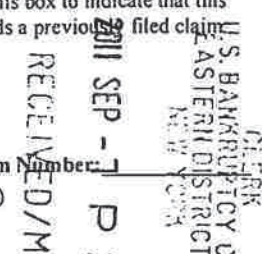
Form 3210 01/01

12601FL 05/00

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**EXHIBIT B**



<b>UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF NEW YORK BROOKLYN DIVISION</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: Manuel Zabala		Case Number: 111-46479-ESS
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): OneWest Bank, FSB		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  <div style="text-align: center;">  </div>
Name and address where notices should be sent: OneWest Bank, FSB P. O. Box 829009 Dallas, Texas 75382-9009		
Name and address where payment should be sent (if different from above): OneWest Bank, FSB Bankruptcy Department 6900 Beatrice Drive Kalamazoo, Michigan 49009  Telephone Number: (800) 669-2300		<input type="checkbox"/> Check this box if you are aware of anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$240,784.64 If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)( ).  Amount entitled to priority: _____  *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
2. Basis for Claim: Money Loaned (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: xxxxxx0908  3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other: _____ Describe: 232 Sonja Circle, Davenport, Florida 33897  Value of Property: \$ _____ Annual Interest Rate: _____  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$47,267.07 Basis for perfection: Recordation of Lien  Amount of Secured Claim: \$240,784.64 Amount Unsecured: \$0.00		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: _____		
Date: August 18, 2011 Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. /s/ Chad Meintel as Creditor's Authorized Agent 972.643.6600		FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF NEW YORK  
BROOKLYN DIVISION

IN RE:

MANUEL ZABALA

§  
§  
§  
§  
§  
§

CASE NO. 111-46479-ESS

CHAPTER 13

JUDGE ELIZABETH S. STONG

**EXHIBIT A**

ITEMIZATION OF CLAIM AND SUMMARY OF SUPPORTING  
DOCUMENTS FOR CLAIM OF ONEWEST BANK, FSB  
REGARDING CERTAIN COLLATERAL DESCRIBED AS:  
232 SONJA CIRCLE, DAVENPORT, FLORIDA 33897

**SECTION 1. ITEMIZATION OF CLAIM**

•	Total Debt (As of July 27, 2011)	\$240,784.64
•	Interest Rate as of July 27, 2011	6.50%
•	Interest from Last Paid Installment	\$24,528.89
•	Detail of Pre-Petition Arrearage through July 27, 2011	
	22 Payments from October 2009 to July 2011 at \$1,144.90 each:	\$25,187.80
	<b>**LATE CHARGES</b>	<b>\$1,259.50</b>
	<b>**PRE-PETITION ATTORNEY FEES &amp; COSTS</b>	<b>\$2,997.60</b>
	Filing Costs	\$940.00
	Foreclosure Attorney Fees	\$910.00
	Service Costs	\$947.60
	Title Policy Costs	\$200.00
	<b>**ESCROW SHORTAGE</b>	<b>\$13,028.08</b>
	<b>**OTHER PRE-PETITION AMOUNTS</b>	<b>\$5,007.40</b>
	BPO/Appraisal Costs	\$90.00
	Inspection Fee	\$286.00
	Property Preservation Costs	\$4,631.40
	<b>**PRE-PETITION CREDITS</b>	<b>(\$213.31)</b>
	Less Suspense Balance	(\$213.31)
	<b>TOTAL PRE-PETITION ARREARAGE:</b>	<b>\$47,267.07</b>
	<b>TOTAL ARREARAGE</b>	<b>\$47,267.07</b>

Your monthly payment amount may change due to an escrow requirement and/or interest rate adjustment.

Your current payment amount and any upcoming changes are provided below:

<u>Effective Date</u>	<u>Effective Amount</u>
08/01/2011	\$1,403.80

PROPOSED ORDER

ORTIZ & ORTIZ, L.L.P.  
127 Livingston Street, 2<sup>nd</sup> Floor  
Brooklyn, New York 11201  
Norma E. Ortiz  
Tel. (718) 522-1117

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Case No.: 11-46479

MANUEL ZABALA,

Chapter 13

Debtor.

-----X

**ORDER GRANTING DEBTOR'S OBJECTION TO CLAIM  
NUMBER 6 ONE WEST BANK, FSB**

Upon the objection (the "Objection") of Manuel Zabala (the "Debtor") dated January 6, 2012, for the entry of an order, pursuant to 11 U.S.C. §§ 105(a), 502(b), 506 (a) and Fed. R. Bankr. P. 3007, disallowing or expunging Claim 6 filed by the One West Bank, FSB (the "Creditor"); the Court having conducted a hearing on the Objection; the Creditor having failed to appear at the hearing or file a response to the Objection; the Debtor having appeared by its counsel Ortiz & Ortiz, L.L.P.; due notice of the Objection having been given and sufficient cause appearing therefore, it is

ORDERED, that the Objection is granted in all respects; and it is further

ORDERED, that pursuant to 11 U.S.C. §§ 105(a), 502(b), 506 (a) and Fed. R. Bankr. P. 3007, Claim 6 filed by One West Bank, FSB, is hereby expunged.

Dated: New York, New York  
Feb. , 2012

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ELIZABETH STONG  
U.S. BANKRUPTCY JUDGE